

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0141**

Troy J. Anderson,
Relator,

vs.

R. P. Enterprise, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 25, 2008
Affirmed
Shumaker, Judge**

Department of Employment and Economic Development
File No. 15489 06

Troy J. Anderson, 10346 302nd Avenue NW, Princeton, MN 55371-3684 (pro se relator)

R. P. Enterprise, Inc., 10540 Cain Road, Rogers, MN 55374-9333 (respondent-employer)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic
Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul,
MN 55101-1351 (for respondent-department)

Considered and decided by Willis, Presiding Judge; Shumaker, Judge; and
Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SHUMAKER, Judge

On this certiorari appeal, the pro se relator challenges the determination of the unemployment-law judge (ULJ) that he is disqualified from receiving unemployment benefits because he voluntarily quit his employment without good reason caused by the employer. We affirm.

FACTS

Relator Troy J. Anderson began his employment as a floor sander with respondent R. P. Enterprise, Inc. in December 2003. In June 2006, Anderson lost his driver's license for driving while intoxicated. Anderson then got rides from another employee, whom R. P. Enterprise had hired to drive Anderson to work. But on August 16, 2006, that employee also lost his driver's license.

Because of his lack of transportation, Anderson failed to report to work on August 17, August 18, and the week of August 21, even though R. P. Enterprise had work available for him. Anderson called Rod Pederson, the president of R. P. Enterprise, and asked Pederson to keep his job open until he could arrange transportation and also asked Pederson if he could arrange for someone to come pick him up and drive him to and from work. Pederson told Anderson they could not provide him with commuting transportation, explaining that it was not feasible for someone to drive the 30 to 40 miles to Anderson's home and then back to the shop at the beginning and end of each workday.

Anderson did not return to work, even though R.P. Enterprise continued to have work available for him. Shortly before September 8, Anderson called Pederson to tell

him that he was going to jail on September 8. Pederson instructed Anderson to call him when he got out of jail to discuss returning to employment.

Anderson was incarcerated from September 8 to September 22, 2006. Although Anderson contends he attempted to contact Pederson, it is undisputed that he did not speak with Pederson again after September 8.

Anderson filed an application for unemployment benefits and established a benefit account. The Minnesota Department of Employment and Economic Development (DEED) determined he was disqualified from unemployment benefits because he had quit his employment.

Anderson appealed DEED's determination, and on November 28, 2006, a telephonic hearing was held before the ULJ. After hearing testimony from Anderson and Pederson, the ULJ concluded that Anderson had quit his job with R. P. Enterprise on August 16, 2006, without a good reason caused by the employer and that he was therefore disqualified from receiving unemployment benefits. In the alternative, the ULJ noted that if Anderson had been discharged, his discharge was the result of his extended absence from work due to the lack of transportation, which amounted to employment misconduct.

Anderson requested reconsideration, but the ULJ affirmed its decision. This certiorari appeal followed.

DECISION

On certiorari appeal from the ULJ's determination, we may affirm, modify, or reverse the decision or remand the case for further proceedings, if the relator's substantial rights

may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

Minn. Stat. § 268.105, subd. 7(d) (2006). This court views the ULJ's findings in a light most favorable to the decision and will not disturb those findings if they are sufficiently supported by the record. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Credibility determinations are resolved by the ULJ, and we defer to those determinations on appeal. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

The threshold issue is whether the employee quit or was discharged. A quit occurs when the employee makes the decision to end employment. Minn. Stat. § 268.095, subd. 2(a) (2006). A discharge, on the other hand, occurs when an employer's words or actions would lead a reasonable employee to believe that he is no longer allowed to work for the employer in any capacity. *Id.*, subd. 5(a) (2006). Whether an employee quit or was discharged is a question of fact. *Shanahan v. Dist. Mem'l Hosp.*, 495 N.W.2d 894, 896

(Minn. App. 1993). But whether an employee is disqualified from receiving unemployment benefits is a question of law, which this court reviews de novo. *Ress*, 448 N.W.2d at 523.

Here, the facts demonstrate that Anderson quit his employment. The record shows that R. P. Enterprise had work available for Anderson after August 16. In addition, Anderson did not speak with his employer about returning to work after his release from jail, even though he had been instructed to do so. Although Anderson claims he attempted to contact Pederson, the ULJ found that Anderson did not speak to Pederson after Anderson was released from jail.

An applicant who quits his employment is disqualified from receiving benefits unless one of the enumerated exceptions applies. Minn. Stat. § 268.095, subd. 1 (2006). One of those exceptions applies when an employee quits for a good reason caused by the employer, which is defined exclusively as “a reason: (1) that is directly related to the employment and for which the employer is responsible; (2) that is adverse to the worker; and (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.” *Id.*, subd. 3(a) (2006). This court reviews de novo whether an employee had good reason to quit. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000). “The determination that an employee quit without good reason attributable to the employer is a legal conclusion, but the conclusion must be based on findings that have the requisite evidentiary support.” *Nichols*, 720 N.W.2d at 594.

Anderson does not argue that any particular exception applies, but instead contends simply that he did not quit. Because he has not presented any argument in this regard, he has waived this issue. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (deciding that an issue not argued in the briefs must be deemed waived).

But even if Anderson had not waived this argument, the result would be the same. The reasons behind Anderson's quit are not attributable to his employer, R. P. Enterprise. *See* Minn. Stat. § 268.095, subd. 3(a)(1) (requiring that a good reason to quit be "directly related to the employment and [a reason] for which the employer is responsible").

Anderson essentially abandoned his job. He lost his driver's license because of driving while intoxicated and was unable to arrange any other transportation after another employee lost his driver's license. In general, transportation to and from work is the employee's responsibility. *Hill v. Contract Beverages, Inc.*, 307 Minn. 356, 358, 240 N.W.2d 314, 316 (1976) ("In the absence of contract or custom imposing an obligation of transportation upon the employer, transportation is usually considered the problem of the employee."). Thus, when an employee is unable to report for work, he cannot expect the employer to hold open the job indefinitely. *Smith v. Am. Indian Chem. Dependency Diversion Project*, 343 N.W.2d 43, 45 (Minn. App. 1984).

Because Anderson quit his employment and because he cannot show that the reason he quit was a reason for which his employer was responsible, we affirm.

Affirmed.